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HAMRE, SCHUMANN, MUELLER &  
LARSON, P.C.  
P.O. BOX 2902  
MINNEAPOLIS, MN 55402-0902

In re Application of :  
NAKAMURA, Kazuhiro et al. :  
Application No. 10/537,640 : DECISION  
PCT No.: PCT/JP03/15599 :  
Int. Filing Date: 05 December 2003 :  
Priority Date: 06 December 2002 : ON PETITION UNDER  
Attorney Docket No.: 13425.0070USWO : 37 CFR 1.8  
For: COVER BODY MOUNTING :  
STRUCTURE OF RESIN CONTAINER :  
:

This is a decision on applicant's "Petition For Withdrawal of Holding of Abandonment," filed on 08 September 2006.

**BACKGROUND**

On 05 December 2003, applicants filed international application no. PCT/JP03/15599, claiming a priority date of 06 December 2002. A copy of the international application was transmitted to the Office by the International Bureau on 24 June 2006. The deadline for payment of the basic national fee in the United States was 06 June 2005.

On 06 June 2005, applicants submitted a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 06 October 2005, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that oath or declaration and the surcharge for late filing of the oath or declaration were required.

On 09 August 2006, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909), indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements.

On 08 September 2006, applicants filed the instant petition indicating that applicants had timely responded to the Notification of Missing Requirements via facsimile on 02 December 2005, enclosing a copy of the 02 December 2005 response.

**DISCUSSION**

Applicants claim to have responded to the Notification of Missing Requirements on 02 December 2005, but the facsimile transmission is not present in the file. However, 37 CFR 1.8(b) states, in part:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of correspondence, or after the application is held to be abandoned, or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Items (1), (2) and (3) have been satisfied. Applicant filed the petition promptly after the mailing of the Notification of Abandonment. Applicant supplied a copy of the declaration and the cover letter with the certificate of facsimile transmission. Applicant has provided a statement regarding the transmission of the declaration based on personal knowledge, supported by the transmission receipt from the Office and the firm's facsimile confirmation.

The declaration has a receipt date of 08 September 2006 and is considered timely as of 02 December 2005.

### CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.8 to withdraw the holding of abandonment is **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 09 August 2006 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Division of PCT Operations for further processing consistent with this decision. The application has a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 08 September 2006.

*Erin P. Thomson*  
Erin P. Thomson  
Attorney Advisor  
PCT Legal Administration

Telephone: (571) 272-3292  
Facsimile: (571) 273-0459